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In the
Supreme Court of the United States

OCTOBER TERM, 1967

No. 647

GOON MEE HEUNG,
PETITIONER

v.

IMMIGRATION AND NATURALIZATION SERVICE,
RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

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Blanchard Press, Inc., Boston, Mass. — Law Printers

INDEX

	Page
Opinions Below	2
Jurisdiction	2
Question Presented for Review	2
Statutes Involved	2
Statement	3
Reasons for Granting the Writ	4
The decision of the United States Court of Appeals for the First Circuit should be reviewed by this Honorable Court because it directly conflicts with the clear mandate and mainstream decisions of this Honorable Court which have laid down the rule that deportation statutes should be construed strictly in favor of the alien	4
Conclusion	7
Appendix:	
Opinion of the United States Court of Appeals for the First Circuit	8
Decision of the Board of Immigration Appeals	17
Title 8, U.S.C., Section 1255(a)	21
Title 8, U.S.C., Section 1182 (a) 19	21

Table of Cases

Page

Ex parte Gouthro, 296 Fed. 506 (E.D. Mich. 1924), aff'd sub nom. *United States* v. *Southro*, 8 F.2d 1023 (6th Cir. 1925) 2, 5

Fong Haw Tan v. *Phelan*, 333 U.S. 6 5

Immigration and Naturalization Service v. *Errico*, 385 U.S. 214 5

Statutes

Immigration and Nationality Act:

Title 8, U.S.C., Section 1105(a) 2

Title 8, U.S.C., Section 1182(a) 19 5

Title 8, U.S.C., Section 1255(a) 2, 3, 4, 6, 7

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OCTOBER TERM, 1967

No.

GOON MEE HEUNG,
PETITIONER

v.

IMMIGRATION AND NATURALIZATION SERVICE,
RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

TO THE HONORABLE THE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Petitioner, Goon Mee Heung, prays that a writ of certiori issue to review the judgment of the United States Court of Appeals for the First Circuit entered in the above-entitled cause on June 29, 1967.

Opinions Below

The decision of the Board of Immigration Appeals is set forth in the Appendix to this petition at page 17. The opinion of the United States Court of Appeals for the First Circuit is unreported at printing but is set forth in full in the Appendix to this Petition at Page 8.

Jurisdiction

Petitioner's action against Respondent was brought under the Immigration and Nationality Act (Title 8, U.S.C. Section 1105a).

Jurisdiction on this Honorable Court is invoked pursuant to Supreme Court Rule 19, Section 1, subparagraph (b) on the grounds that the decision of the Court of Appeals has decided an important question of Federal Law which has not been, but should be, settled by this Honorable Court and has rendered a decision in conflict with the decision of another Court of Appeals on the same matter. See *Ex parte Gouthro,* 296 Fed. 506 (E.D. Mich. 1924), *aff'd sub nom. United States* v. *Southro,* 8 F.2d 1023 (6th Cir. 1925).

Question Presented for Review

1) Did the petitioner's appearance for examination before an immigration inspector at the port of entry constitute an inspection as the term is set out in Section 1255(a) of Title 8 of the U.S.C.?

Statutes Involved

The statute involved is the construction and interpretation of Title 8, U.S.C., Section 1255(a). Section 1255(a) is set forth in Petitioner's Appendix.

Statement

Goon Mee Heung, the petitioner, is a 41-year-old married, female alien, a native of China and a citizen of the Republic of China. She entered the United States at Honolulu, Hawaii on or about October 15, 1961, and was admitted after an appearance for examination before an immigration officer by using a United States passport to which she was not entitled.

Sometime during 1963, the petitioner voluntarily appeared before the Immigration and Naturalization Service at Boston, Massachusetts and confessed her true identity and acknowledged she was not a citizen of the United States.

On April 16, 1964, the petitioner's native born citizen brother, Yoke Wah Goon filed a visa petition on her behalf with the Immigration and Naturalization Service at Boston, Massachusetts.

A deportation hearing was held in reference to the petitioner's matter on April 29, 1964, and she was ordered deported.

On September 25, 1964, the Immigration and Naturalization Service advised the petitioner's brother that the visa petition filed by him on the petitioner's behalf had been approved.

The petitioner was instructed by the Immigration and Naturalization Service, on April 18, 1966, to report to Logan International Airport on May 3, 1966 for deportation to Hong Kong, B. C. C.

The petitioner, by her attorney, filed a motion to re-open her deportation case with the Immigration and Naturalization Service so that she could adjust her status in the United States under Section 1255 of Title 8 of the U.S.C. and this motion was denied by a decision of the Special Inquiry Officer dated May 2, 1966.

The petitioner appealed from the decision of the Special Inquiry Officer to the Board of Immigration Appeals, Washington, D. C. The Board, after a hearing, dismissed the appeal on July 14, 1966. The petitioner filed a petition for review of the decision of the Board of Immigration Appeals on November 30, 1966 in the United States Court of Appeals for the First Circuit. After argument the court entered its opinion on June 29, 1967. It is from this opinion that the petitioner petitions for a writ of certiorari.

Reasons for Granting the Writ

The decision of the United States Court of Appeals for the First Circuit should be reviewed by this Honorable Court because it directly conflicts with the clear mandate and mainstream decisions of this Honorable Court which have laid down the rule that deportation statutes should be construed strictly in favor of the alien.

The question raised by this appeal is a vital one to thousands of aliens within the United States. Many of these aliens are the mothers, fathers, sons, daughters, brothers and sisters of American citizens or legal permanent residents.

The question is whether a person who enters the United States by a United States passport to which they are not entitled and at that time presented themselves to an immigration officer has been "inspected" so as to allow for their adjustment to that of a legal permanent resident under Section 1255(a) after a valid visa petition has been approved by the Immigration and Naturalization Service?

The petitioner in the instant case is the sister of a United States citizen and the daughter of a legal permanent resident. The petitioner's brother has filed a visa petition on her behalf and the petition has been approved by the

Immigration and Naturalization Service and a quota number available.

Yet if the interpretation given to the term "inspected" by the United States Court of Appeals for the First Circuit is allowed to stand, the petitioner and many other aliens with substantial, close family ties in the United States will be deported and in many instances will remain separated from their families for the rest of their lives because of Title 8 U.S.C. Section 1182(a) 19. Section 1182(a) 19 is set forth in Petitioner's Appendix.

As this Honorable Court has emphasized in *Fong Haw Tan* v. *Phelan,* 333 U.S. 6:

> "We resolve the doubts in favor of that construction because deportation is a drastic measure and at times the equivalent of banishment or exile. *Delgadillo* v. *Carmichael,* 332 U.S. 388. It is the forfeiture of misconduct of a residence in this country. Such a forfeiture is a penalty. To construe this statutory provision less generously to the alien might find support in logic. But since the stakes are considerable for the individual, we will not assume that Congress meant to trench on his freedom beyond that which is required by the narrowest of several possible meanings of the words used."

This Court has consistently stated that if there is doubt as to the correct construction of the statute, the doubt should be resolved in favor of the alien. *Immigration and Naturalization Service* v. *Errico,* 385 U.S. 214.

In *Ex parte Gouthro,* 296 Fed. 506 the court stated:

> "If such an inspector is afforded a full and fair opportunity to make such an inspection of arriving aliens as he may deem sufficient, it cannot, in my opinion,

> be properly said that such alien has entered "without inspection" even though it later develops that said inspector has not made as complete or successful an inspection as he could or should have made, especially in view of the discretion vested in immigration inspectors as to the nature and extent of the inspection required . . . Even if the petitioner made false and misleading statements to him, he was not obliged to accept them as true, or to refrain from such further questions and investigation as would enable him to reach a proper conclusion as to the right of petitioner to enter the country. If a witness in court makes false statements on cross examination, and thereby induces cross-examining counsel to forego further questioning, such a witness cannot be said to have testified "without cross-examination . . . I reach the conclusion that whether or not petitioner made false and misleading statements to the inspector, as alleged, the contention of the government that petitioner entered without inspection is without legal basis and cannot be sustained."

We respectfully submit that the ruling of the Gouthro case be adopted in view of this Honorable Court's mandate of interpreting deportation statutes in favor of the alien.

We submit that the learned Court below also erred in adopting the view that Section 1255(a) does not apply to aliens who are unlawfully in the country. The Immigration and Naturalization Service regularly applies said section and grants relief to students or visitors who have remained in the United States longer than permitted by the Immigration and Naturalization Service. Said individuals are in an unlawful status at the time of their adjustment.

Conclusion

This Honorable Court should grant certiorari not only for the relief of this individual petitioner but for the reason that there are thousands of aliens facing deportation, despite close family ties in the United States, if the ruling of the Court below stands. We further submit the opinion of United States Court of Appeals for the First Circuit is standing contra to the mandate of this Honorable Court on the interpretation of deportation statutes. A clear exposition by this Court of the guide lines for the interpretation of the law by the administrative authorities and the lower courts, will aid in the orderly administration of the Immigration and Nationality Act.

The Petition for Certiorari to the United States Court of Appeals for the First Circuit should be granted and its decision reversed.

That this Honorable Court determine that the petitioner was inspected within the purview of Section 1255(a) of Title 8 of the U.S.C. and is eligible for adjustment of status to a legal permanent resident of the United States of America.

Respectfully submitted,

JOSEPH F. O'NEIL
Attorney for Petitioner,
100 State Street,
Boston, Massachusetts 02109

Appendix A

United States Court of Appeals
For the First Circuit

No. 6828.

GOON MEE HEUNG,

PETITIONER,

v.

IMMIGRATION AND NATURALIZATION SERVICE,

RESPONDENT.

ON PETITION TO REVIEW AN ORDER OF
THE BOARD OF IMMIGRATION APPEALS

Before ALDRICH, *Chief Judge*,
McENTEE and COFFIN, *Circuit Judges*.

Joseph F. O'Neil for petitioner.
Albert F. Cullen, Jr., Assistant U. S. Attorney, with whom *Paul F. Markham*, United States Attorney, was on brief, for respondent.

June 29, 1967.

ALDRICH, *Chief Judge*. Petitioner, Goon Mee Heung, was ordered by the Immigration and Naturalization Service on April 18, 1966, to report for deportation to Hong Kong on May 3, 1966. This order was based on a prior deportation order entered against her on April 29, 1964, for having entered the United States without valid entry documents. 8 U.S.C. §§ 1182(a)(20), 1251(a)(1). The Service determined that she entered by the fraudulent use of a passport, and that in point of fact she had no legal visa. No appeal was taken. Immediately prior to the day set for her deportation petitioner filed a motion under 8 U.S.C.

§ 1255 to reopen her case so that she could apply for an adjustment of her status to that of an alien lawfully admitted for permanent residence. This statute, by its terms is applicable only to aliens who were "inspected" at the time of entry, which requirement petitioner alleged she met, and necessitates a showing that the alien is ". . . eligible to receive an immigrant visa and is admissible to the United States for permanent residence, and . . . an immigrant visa is immediately available to him . . . ," as to which the motion was entirely silent. The Service and the Board of Immigration Appeals denied petitioner's motion on the ground that she had entered the country without having been "inspected."

There is, unfortunately, no definition of the term "inspection" anywhere in the act. In addition to section 1255(a), section 1251(a)(2) uses the term in providing that anyone who enters the United States without inspection shall be subject to deportation. Some cases under this section and its predecessors have held that false statements to immigration inspectors have the effect of preventing meaningful inspection and, accordingly, render an alien deportable. *E.g., United States ex rel. Volpe* v. *Smith,* 7 Cir., 1933, 62 F.2d 808, *aff'd on other grounds,* 289 U.S. 422. Others have held to the contrary. *E.g., Ex parte Gouthro,* E.D. Mich., 1924, 296 Fed. 506, *aff'd sub nom. United States* v. *Southro,* 6 Cir., 1925, 8 F.2d 1023.[1] We find no case, however, holding that the acceptance of a false claim to

[1] Some of the early cases casting doubt on the question whether misrepresentations prevented an alien from being inspected, in addition to not involving misrepresentation of citizenship, relied on the absence in the statute of any provision making fraud or misrepresentation in entering the United States grounds for deportation. *E.g., Ex parte Gouthro, supra; Ex parte Guest,* D.R.I., 1923, 287 Fed. 884. Needless to say, this lacuna in the immigration laws no longer exists, 8 U.S.C. §§ 1182(a)(19), 1251(a)(1), and, accordingly, there is no longer a need for construing the statute with such an absence in mind.

United States citizenship, enabling an alien to enter the country without registering as an alien, constitutes inspection, or is equivalent to having been inspected. See, *e.g.*, *Ben Huie* v. *INS*, 9 Cir., 1965, 349 F.2d 1014.

Whatever the effect other misrepresentations may arguably have on an alien's being legally considered to have been inspected upon entering the country, we do not now consider; we are here concerned solely with an entry under a fraudulent claim of citizenship. Aliens who enter as citizens, rather than as aliens, are treated substantially differently by immigration authorities. The examination to which citizens are subjected is likely to be considerably more perfunctory than that accorded aliens. *Gordon & Rosenfield*, Immigration Law and Procedure § 316d (1966). Also, aliens are required to fill out alien registration forms, copies of which are retained by the immigration authorities. 8 C.F.R. §§ 235.4, 264.1; 8 U.S.C. §§ 1201(b), 1301-06. Fingerprinting is required for most aliens. 8 U.S.C. §§ 1201(b), 1301-02. The net effect, therefore, of a person's entering the country as an admitted alien is that the immigration authorities, in addition to making a closer examination of his right to enter in the first place, require and obtain information and a variety of records that enable them to keep track of the alien after his entry. Since none of these requirements is applicable to citizens, an alien who enters by claiming to be a citizen has effectively put himself in a quite different position from other admitted aliens, one more comparable to that of a person who slips over the border and who has, therefore, clearly not been inspected.

Contrary to the suggestion in Judge Coffin's dissent, we need not, and do not, decide that whenever an inspection is not pursued because of a misrepresentation there has been no inspection. What we do hold is that there must at least be a submission or presentation for the inspection required

by the statute, and that for the substantive reasons heretofore given section 1251 "(a) Any alien . . . who . . . (2) entered the United States without inspection . . ." required an inspection *as an alien*. This inspection was never had in any degree. A man who, when asked about his health, falsely denies any past illnesses, as a result of which no further examination is made, has, in a sense, had had a health inspection. A man who successfully claims to be a citizen has not been inspected as an alien at all. We hold, accordingly, that where there was a false claim of citizenship, made and accepted, there has been no inspection under this section.

Even if we are mistaken in this regard, the legislative history shows that the term "inspection" in section 1255(a), under which petitioner seeks to come, is even more strict. This section as originally enacted in 1952 was restricted to certain aliens lawfully in this country, on a less than permanent basis, for whom it furnished a procedure under which they might be transferred to that broader status.[2] As the result of an extensive 1960 amendment, Pub. L. 86-648, the presently pertinent part of section (a) reads as follows.

> "(a) The status of an alien, other than an alien crewman, who was inspected and admitted or paroled into the United States may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence . . . ."

We find in the legislative history no purpose to broaden the statute to apply to aliens who are *un*lawfully in the

---

[2] "(a) The status of an alien who was lawfully admitted to the United States as a bona fide nonimmigrant and who is continuing to maintain that status may be adjusted by the Attorney General in his discretion (under such regulations as he may prescribe to insure the application of this paragraph solely to the cases of aliens who entered the United States in good faith as nonimmigrants) to that of an alien lawfully admitted for permanent residence . . . ."

country. On the contrary, the Senate and House Report which accompanied the joint resolution stated in material part,

> "It is intended that only those aliens who enter the United States in good faith and without any intention of circumventing quota restrictions of the Immigration and Nationality Act, or any other law relating to immigration shall be entitled to the benefits of section 245(a), [8 U.S.C. § 1255(a)] as amended." 1960 U.S. Code Cong. and Adm. News, 3124, 3147.

We confess to some criticism of the draftsmanship of the amendment, but this in itself does not lead us to the conclusion that Congress intended a major charge in the scope of the Statute. *Cf. Compagnie Nationale Air France* v. *Costano,* 1 Cir., 1966, 358 F.2d 203, 207.

Actually, there were two changes. The first word "lawfully" first disappeared in a 1958 amendment. The concept, however, was not intended to be changed. In the Senate Report occurs the sentence, "This legislation will not benefit the alien who has entered the United States in violation of the law." Senate Report 2133, 1958 U.S. Cong. and Adm. News, 3698, 3699. The House Report, also, refers to lawful admission. *Id.,* at 3701.

The 1958 amendment read as follows:

> "(a) The status of an alien who was admitted to the United States as a bona fide nonimmigrant may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence . . . ."

Because of the joint legislative reports and the absence of any mention of the omission of the word "lawfully" from the initial clause we must assume that the drafters thought it remained implicit, possibly on the basis of the words "bona fide," or perhaps simply thinking that "law-

fully admitted for permanent residence" was in obvious juxtaposition with lawfully admitted for some lesser purpose. If the former, the implication became even more attenuated with the 1960 amendment, but this would not be the first time that such variations between language and disclosed intent have happened. Even unambiguous language "does not end inquiry into Congress' purpose ...." *National Woodwork Manufacturers Ass'n* v. *NLRB*, 4/17/67 U.S. (35 LW 4351); *United States* v. *Wise*, 1962, 370 U.S. 405, 412-14; *Carolene Products Co.* v. *United States*, 1944, 323 U.S. 18. In the light of these clear expressions of legislative intent we must agree with the view of the Second Circuit that this section remains as special assistance only for aliens who are properly here. *See Tibke* v. *INS*, 2 Cir., 1964, 335 F.2d 42.

Affirmed.

COFFIN, *Circuit Judge* (dissenting). While conceding that the court's opinion is both reasonable and supported by authority, I do not think that it is compelled by either the language or the scheme of the statutes. It is, I think, not at all difficult to seize upon a narrower meaning of "inspection" without doing violence to either law or policy —in accordance with the rule that deportation statutes should be construed strictly in favor of the alien. *Fong Haw Tan* v. *Phelan*, 333 U.S. 6, 10 (1948). See also *INS* v. *Errico*, 385 U.S. 214, 225 (1966).

A legitimate narrower meaning in my view, is that an alien has been "inspected" when he has presented himself to an inspector at a proper place and time, whether or not meaningful inquiry then ensues. To make oneself available to an inspector for whatever questions he may wish to ask, even if one makes false statements, is to be inspected, just as "[i]f a witness in court makes false statements on cross-examination, and thereby induces cross-examining counsel to forego further questioning, such a witness can-

not be said to have testified 'without cross-examination'." *Ex parte Gouthro,* 296 Fed. 506, 511-12 (E.D. Mich. 1924), *aff'd sub nom. United States* v. *Southro,* 8 F.2d 1023 (6th Cir. 1925). Just as false swearing is a separate crime subject to separate sancton, so today—and since 1952—is false representation in securing entry, 8 U.S.C. § 1182(a)(19). While the court reasons that the addition of this ground for deportation makes unnecessary and construction giving significance to the absence of such a ground, I draw the conclusion that one who enters through false representation, being now explicitly deportable under section 1182(a)(19), need not also be implicitly barred from discretionary adjustment of status under section 1255(a) (by equating false representation of citizenship with lack of inspection) or doubly deportable by broadly defining "inspection" in section 1251(a)(2).[3]

A narrower meaning of "inspection" seems consistent with the statutory scheme, both past and present. At the time of *Gouthro,* the predecessor of section 1251(a)(2) read:

> "Any alien who shall have entered the United States by water at any time or place other than as designated by immigration officials, or by land at any place other than one designated as a port of entry for aliens by the Commissioner General of Immigration, or at any time not designated by immigration officials, or

[3] Both *United States ex rel. Volpe* v. *Smith*, 62 F.2d 808 (7th Cir. 1933), *aff'd on other grounds*, 289 U.S. 422 (1933), cited by the court, and *Saadi* v. *Carr*, 26 F.2d 458 (9th Cir.), *cert. denied*, 278 U.S. 616 (1928), involved proceedings for deportation before the statute made fraud or false representations specific grounds for deportation. *Ben Huie* v. *INS*, 349 F.2d 1014 (9th Cir. 1965) merely declares the law "well settled", citing *Volpe* and *Saadi*. In view of the increased concern manifested by the Supreme Court toward the rights of aliens sought to be deported and the present existence of 8 U.S.C. § 1182(a)(19), I do not find these authorities as compelling as my brothers do.

who enters without inspection, shall, upon the warrant of the Secretary of Labor, be taken into custody and deported." Immigration Act of 1917, § 19, 39 Stat. 889. This series of thoughts seems to be directed at those who seek to frustrate the immigration laws by surreptitious avoidance of all scrutiny. The phrases used contemplate the choice of time and place to avoid all detection, and would encompass the case of one who slips by an inspector unnoticed. *e.g., Ex parte Callow,* 240 Fed. 212 (D. Col. 1916). This class of proscribed actions is set apart from those which involve the processing of papers. The present section 1251 recognizes the dichotomy by referring in subsection (a)(1) to all aliens excludable by law at the time of entry—which language would cover, among others, any alien who seeks to procure documents by fraud or misrepresentation of any alien who at entry does not possess the necessary valid documents, 8 U.S.C. §§ 1182(a)(19)-(20)—and in subsection (a)(2), to those who have entered without inspection. Moreover, section 1251(a)(2), while more truncated than its predecessor, still carries the reference to entry "at any time or place other than as designated. . ."

I agree with the court that the legislative history evinces no purpose to broaden section 1255(a) to apply to aliens unlawfully in the country. However, when "lawfully" as a modifier of "alien who was . . . admitted to the United States as a bona fide immigrant" was dropped in 1958, Act of August 21, 1958, Pub. L. No. 85-700, 72 Stat. 699; and when, two years later, "bona fide immigrant" disappeared, Act of July 14, 1960, Pub. L. No. 86-648, 74 Stat. 505, it seems to me that Congress did something, whether it intended to or not. Moreover, to invoke statements of legislative intent under these circumstances seems to me to run counter to the mandate to follow the narrowest of possible meanings to favor the alien.

In addition to the above points, I am troubled by the

difficulty of knowing where to stop if we go beyond the minimal definition of "inspection" as the submission of oneself to whatever interrogation and detention the inspector sees fit to require. In this case the court limits its holding only to a fraudulent claim of citizenship on the reasoning that such a claim effectively blocks further meaningful inquiry at the time of entry and that records enabling authorities to keep track of the alien are not required. Both reasons might argue for a stronger sanction to be imposed on one who fraudulently claims citizenship than on one whose fraud is directed at a different issue. But in fact Congress has not seen fit to make this distinction.

We are, I think, assuming a great deal to single out one kind of falsehood as vitiating inspection above all other kinds because of our assumption that it lulls inspectors more effectively than other kinds. And to the extent that we rest our conclusion on the frustration caused to the record-keeping procedures required of aliens, we are construing a statute because of the administrative procedures devised to implement that statute. The administrative tail is wagging the statutory dog. Both grounds, it seems to me, create an additional sanction of a kind more appropriately left to the Congress.

I would therefore say that petitioner is not barred from seeking discretionary relief under 8 U.S.C. § 1255.

Appendix B

U. S. DEPARTMENT OF JUSTICE
BOARD OF IMMIGRATION APPEALS

Files: A-11841691-Boston
A-12732583

In re: GOON, WING WAH
GOON, MEE HEUNG

IN DEPORTATION PROCEEDINGS

APPEAL

ORAL ARGUMENT: June 14, 1966

On behalf of respondents: Joseph F. O'Neil, Esquire
100 State Street
Boston, Massachusetts 02109

On behalf of I&N Service: Irving A. Appleman, Esq.

CHARGES:

Order: Sec. 241(a)(1), I&N Act (8 USC 1251)
(a)(1)—Excludable at time
of entry—immigrant—no visa

Lodged: None

APPLICATION: Motion for reopening

Respondents appeal from the special inquiry officer's order denying their motions for reopening of proceedings so that they may file applications for adjustment of status under section 245 of the Act. The special inquiry officer

held they were ineligible because they had entered without "inspection".

Respondents, a 30-year-old male and his 41-year-old sister, both citizens of China, entered the United States to reside permanently although they did not have the necessary documents. The special inquiry officer ordered their deportation on April 29, 1964; appeals were not taken. On April 18, 1966, they were notified to report for deportation in May. On April 29, they filed the present motions. In support of the motions, the respondents revealed these matters which are not of record: that they entered the United States on United States passports, that in 1963 they voluntarily confessed to the Service that they were aliens, that a visa petition on behalf of each, filed by their United States citizen brother, has been approved, and that a visa petition filed on behalf of the male respondent by his mother, a legal permanent resident, has also been approved.

The brief in support of the motions took cognizance of the fact that the Board has ruled that one seeking relief under section 245 of the Act is statutorily ineligible unless he has been "inspected" upon his admission, and that an alien who has entered as a citizen has not been "inspected" (*Matter of S—*, 9 I&N Dec. 599; *Matter of K-B-N*, 9 I&N Dec. 50). However, counsel expresses belief that these precedents no longer control in light of what he finds to be a clear directive issued by Congress when it passed the bill which became Public Law 89-236 (Act of October 3, 1965, 79 Stat. 911). What counsel relies upon as a "directive" is proof that many members of Congress and many other interested parties have indicated that the primary purpose of the Act of October 3, 1965 is to reunite families in the United States.

At oral argument the appellate trial attorney pointed out that the Act of October 3, 1965 made no specific reference to the issue involved here, that the statements concerning reunification of families were general in nature, that counsel's attempt to apply these general statements to the issue of "inspection" of aliens is illogical for it would result in holding that one who entered posing as a United States citizen had been "inspected" even though he had no family.

The Act of October 3, 1965, amended sections 245(b) and (c) of the Immigration and Nationality Act, but did not eliminate the requirement contained in section 245 that an applicant for relief establish that he had been "inspected", nor did it indicate that an alien who entered to join his family was to be considered as "inspected" although he entered as a United States citizen. Despite counsel's exhaustive research, he has pointed to no specific reference to the issue of "inspection". The summary of Public Law 89-236 issued in October 1965 by the Committee on the Judiciary, House of Representatives, 89th Congress, 1st Session, refers to changes made in section 245 of the Act but does not refer to the matter of "inspection". References to the reuniting of families were, in our opinion, aimed primarily at the removal of the quota barriers to the coming to this country of close members of families living in the United States. We do not believe that any change was intended in the rule that an alien who gained admission by a knowing false claim to United States citizenship has not been "inspected".

Counsel contends that respondents were inspected because they were interrogated by an immigration officer prior to their entries and their travel documents were reviewed

and stamped at the port of entry. These contentions were considered and rejected in *Matter of S—*, supra.

Counsel contends that if respondents are deported they would be ineligible to rejoin their families in the United States because of the provisions of section 212(a)(19) of the Act which bar the issuance of a visa to an alien who has procured a document by fraud. This contention is one which would well be taken into consideration in deciding whether relief should be granted as a discretionary matter, but it can have no bearing upon determining the meaning of section 245—a law which applies equally to those with families and those without families.

Counsel believes that the rule as to "inspection" of aliens who enter as United States citizens gives an overstayed student or visitor a greater opportunity to join his family in the United States than one who entered with a United States passport to which he was not entitled. The term "inspection" is one of art in the immigration law. It was defined many years ago, and it must be presumed that Congress in enacting section 245 selected the term "inspection" with knowledge of its meaning under the immigration laws. The appeals will be dismissed.

ORDER: It is ordered that the appeals be and the same are hearby dismissed.

Acting Chairman

Appendix C

8 USC

§ 1182. Excludable classes of aliens; non-applicability to certain aliens; waiver of requirements; parole of aliens; report to Congress; suspension of entry by President.

(a) Except as otherwise provided in this chapter, the following classes of aliens shall be ineligible to receive visas and shall be excluded from admission into the United States:

* * *

(19) Any alien who seeks to procure, or has sought to procure, or has procured a visa or other documentation, or seeks to enter the United States, by fraud, or by willfully misrepresenting a material fact;

§ 1255. Adjustment of status of nonimmigrant to that of person admitted for permanent residence; record; natives of contiguous country or adjacent island.

(a) The status of an alien, other than an alien crewman, who was inspected and admitted or paroled into the United States may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if (1) the alien makes an application for such adjustment, (2) the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence, and (3) an immigrant visa is immediately available to him at the time his application is approved.

In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 647

GOON MEE HEUNG, PETITIONER

v.

IMMIGRATION AND NATURALIZATION SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

Petitioner, a 41-year-old citizen of the Republic of China, entered the United States via Hawaii about October 15, 1961. She represented herself to be a citizen of the United States and exhibited a United States passport fraudulently supporting this claim. After a hearing petitioner was, on April 29, 1964, ordered deported for having entered the United States without valid entry documents, pursuant to Sections 212(a)(20) and 241(a)(1) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(20) and 1251(a)(1)). No appeal was taken. Based on these proceedings, the Service issued an order dated April 18, 1966, for petitioner to report on May 3, 1966, for deportation

279-720—67

to Hong Kong—the residence of her husband and children.

On April 29, 1966, petitioner filed a motion to reopen the deportation proceedings to permit application for adjustment of status to that of an alien admitted for permanent residence under Section 245 of the Act (8 U.S.C. 1255).[1] The special inquiry officer denied the motion on the ground that petitioner was ineligible for adjustment of status under Section 245 since she had not been inspected as an alien upon her entry into the United States. The Board of Immigration Appeals dismissed the ensuing appeal (Pet. App. B), and the court of appeals, one judge dissenting, affirmed (Pet. App. A).

DISCUSSION

Petitioner contends that her entry into the United States, even though under a false claim of American citizenship and with knowing use of a fraudulent passport, nevertheless constituted an "inspection" within the meaning of Section 245 of the Act (Pet. 4–6). It has long been settled, however, that entry into this country as a citizen using a false passport, thereby evading completely any examination as an alien, is no inspec-

[1] Section 245 of the Act provides, in pertinent part:

Section 245. (a) The status of an alien, other than an alien crewman, who was inspected and admitted or paroled into the United States may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if [three specified conditions are met] * * *.

tion at all.[2] See *Sherman* v. *Immigration and Naturalization Service*, 350 F. 2d 894 (C.A. 2), reversed on other grounds, 385 U.S. 276; *Ben Huie* v. *Immigration and Naturalization Service*, 349 F. 2d 1014, 1017 (C.A. 9); *United States ex rel. Volpe* v. *Smith*, 62 F. 2d 808 (C.A. 7), affirmed, 289 U.S. 422; *Saadi* v. *Carr*, 26 F. 2d 458 (C.A. 9), certiorari denied, 278 U.S. 616; *Matter of S—*, 9 I & N Dec. 599; *Matter of K—B—N—*, 9 I & N Dec. 50; see generally Gordon and Rosenfield, *Immigration Law and Procedure*, §§ 3.16, 4.8 (1966). The force of these decisions is not lessened by the fact that they arose in proceedings for deportation under Section 241(a)(2) (8 U.S.C. 1251(a)(2)) on the ground that entry was without inspection. Petitioner's reliance on *Ex Parte Gouthro*, 296 Fed. 506 (E.D. Mich.), affirmed *sub nom. United States* v. *Southro*, 8 F. 2d 1023 (C.A. 6)—involving alleged misrepresentations concerning the purpose of entry in the course of an inspection as an alien—is unwarranted. As noted by the court of appeals (Pet. App. A 10–11), whatever may be said of other misrepresentations, an entry under a fraudulent claim of citizenship, if successful, circumvents without

[2] A contrary reading of the statute would put a wholly unwarranted premium on an alien's successfully entering the country through the use of fraudulent citizenship papers (see Pet. App. 10). And the fact that misrepresentation incident to entry is now a separate ground for deportation (8 U.S.C. 1182(a)(19)) hardly means that the inspection requirement should be rendered nugatory and effectively read out of the Act, at least insofar as the availability of discretionary relief under Section 245 is concerned.

further inquiry all of the alien registration forms and other control procedures contemplated by Congress to apply to all aliens in obtaining a visa abroad and in gaining entry to this country.[3] *Gouthro* is thus plainly distinguishable and presents no conflict with the instant decision.

Moreover, Congress has made it clear that Section 245 of the Act—the adjustment of status provision—was intended to benefit "only those aliens who enter the United States in good faith and without any intention of circumventing quota restrictions * * * or any other law relating to immigration * * *." S. Rep. No. 1651, 86th Cong., 2d Sess., p. 27, 1960 U.S. Code Cong. and Admin. News 3124, 3147; see also S. Rep. No. 2133, 85th Cong., 2d Sess., 1958 U.S. Code Cong. and Admin. News 3698–3701. Accordingly, as the court of appeals alternatively held (Pet. App. A 11–13), it would appear that Congress intended the inspection at entry required for Section 245 relief to be one free of any material misrepresentation. Indeed, as the court below pointed out, "the legislative history shows

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[3] Noting the limited scope of its holding, the court below stated (Pet. App. 10–11): "[W]e need not, and do not, decide that whenever an inspection is not pursued because of a misrepresentation there has been no inspection. What we do hold is that there must at least be a submission or presentation for the inspection required by the statute, and that for the substantive reasons heretofore given Section 1251 * * * required an inspection *as an alien*. This inspection was never had in any degree. * * * A man who successfully claims to be a citizen has not been inspected as an alien at all. We hold, accordingly, that where there was a false claim of citizenship, made and accepted, there has been no inspection under [Section 241]."

that the term 'inspection'" as used in Section 245 was intended to be "even more strict" in meaning than in Section 241 (Pet. App. 11). Under either view, petitioner's method of entry under a fraudulent claim of citizenship bars the relief sought.

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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OCTOBER 1967.

U. S. GOVERNMENT PRINTING OFFICE 19—